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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,169	09/18/2003	Alan K. Snell	1032.005	6319
36790	7590	07/07/2006	EXAMINER	
TILLMAN WRIGHT, PLLC			GIBSON, KESHIA L	
PO BOX 471581			ART UNIT	
CHARLOTTE, NC 28247			PAPER NUMBER	
			3761	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/665,169

Applicant(s)

SNELL, ALAN K.

Examiner

Keshia Gibson

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 50-52,62-64,73,74,76 and 78-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-52,62-64,73-74,76,78-91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/14/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 4/14/06 have been fully considered but they are not persuasive. Applicant has argued that Narawa does not disclose a lengthwise fold; however, Examiner contends that Narawa does, as supported by Examiner's markups of Narawa Figures (attached). In markups, the Examiner's has pointed out lengthwise folds.

Applicant has further argued that Claims 80 and 86 recite a novel feature of the invention, which was not previously recognized: that the final thickness of the compressed (vacuum-packed) diaper is approximately the same thickness of the nominally-configured diaper. However, the optimization of a range has no patentable significance unless a new and unexpected result is produced. In this case, it would have been obvious to one of ordinary skill in the art that optimizing the dimensions of the

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compressed diaper would allow for a reduced configuration to fit within a variety of desired spaces and locations.

3. Thus, despite applicant's arguments, Nawara is still considered to anticipate and/or render obvious the structural limitations set forth in Claims 50-52, 62-64, 73-74, 76, 78-91 of the claimed invention, as presented in the previous Office Action (which has been modified and presented again, in view of applicant's amendments, below).

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 50 and 60-64 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Narawa (JP 10-95481).

In regard to Claims 50 and 60-64, Narawa et al. disclose an unused diaper 2 that is hermetically sealed (i.e., has an airtight seal) within an air impermeable encasement 3 after being vacuumed) (analogous to air being removed from the encasement (abstract, means for solving the problem, effect of the invention, examples). Because Narawa et al. disclose removing air from the encasement, and then closing the encasement with an airtight seal, this inherently created a partial vacuum. The diaper is compressed ([0010]). Because Narawa disclose reducing the thickness of the diaper, the volume is inherently reduced [0015]. Narawa et al. further disclose that the encasement 3

encloses only one diaper and has a substantially rectangular shape (Drawings 1, 4, 8-10; title; abstract, [0014]). Narawa et al. further disclose that the diaper 2 is folded at least twice in a lengthwise direction (Drawings; [0027]-[0029], Examiner's markups-attached). One configuration comprises folds in both the length and width direction that are half of the "nominal" configuration (Fig. 7-8). A length of the diaper (in this case the "width") can be "foldedly reduced" to one-third or one-fourth of the "nominal configuration" (Fig. 6). Also see discussion for Claim 42.

In regard to Claim 52, the encasement 3 comprises a notch 36 to facilitate opening of the encasement 3 (Drawing 1; Embodiment of the Invention- [0020]-[0021]).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 51, 73-74, 78, 80-84, 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narawa et al.

In regard to Claims 51, 73, 74, 78, 80 and 86, Narawa et al. disclose the claimed invention, as discussed previously, but do not expressly disclose that the package has specific dimensions. However, Narawa et al. do disclose compressing a diaper so as to reduce its thickness and to be compact for carrying convenience. The ability to carry/transport the package within various desired locations depends on the dimensions

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of the package itself; thus, the package dimensions are considered to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the package with specific dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 81-84 and 87-90, see previous discussion for Claims 52 and 62-64.

5. Claim 76, 79, 85, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuske et al. (US 6,318,555).

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In regard to Claims 76, 79, 85, and 91, Narawa et al. disclose the claimed invention but do not expressly disclose that the diaper comprises printed graphics that are viewable through the encasement. Kuske et al. teach providing a diaper with graphics to serve as visual indicators for the article or as enhancements to appeal to the consumer and further disclose packaging the diaper so that the diaper graphics are visible through the encasement (whole document, especially abstract, column 2, lines 57-column 3, line 3; column 3, line 47-column 4, line 15). One would have been motivated to modify the article of Narawa to provide the diaper with a graphic and further package the article so that the graphic is viewable through the encasement, as taught by Kuske et al., since doing so would provide various visual cues to the consumer. Thus, it would have been obvious to modify the article of Narawa to provide the diaper with a graphic and further package the article so that the graphic is viewable through the encasement, as taught by Kuske et al., since doing so would provide various visual cues to the consumer.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Keshia Gibson  
Examiner  
Art Unit 3761

klg 6/24/06

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER  
